

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**Joshua Van Laan,**

Plaintiff,

v

Case No. 2:23-cv-10146

Hon. Victoria A. Roberts

Mag. Judge Curtis Ivy, Jr.

**Macomb County**, a political Subdivision of the State,  
**Peter Lucido**, in his individual and official capacity,  
**Donald Fresard**, in his individual and official capacity.

Defendants.

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Macomb County Corp. Counsel  
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(586) 469-6346  
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**DEFENDANT MACOMB COUNTY'S ANSWER  
TO PLAINTIFF'S COMPLAINT**

Defendant Macomb County, acting through counsel, answers Plaintiff's  
Complaint as follows:

1. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof; alternatively, the allegations of the paragraph corresponding hereto constitute a conclusion of law requiring no response.

2. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

3. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

4. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

5. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

6. The allegations of the paragraph corresponding hereto are denied as untrue in fact.

7. Defendant County denies that Plaintiff engaged in a protected activity and further denies that Plaintiff's activity, regardless of its nature or characterization, infuriated the County as the County is not a living breathing sentient being and is, therefore, incapable of being infuriated.

### **Jurisdiction and Parties**

8. The allegations of the paragraph corresponding hereto constitute a conclusion of law requiring no response.

9. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

10. The allegations of the paragraph corresponding hereto are admitted.

11. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

12. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

13. The assertions of the paragraph corresponding hereto require no response.

14. The allegations of the paragraph corresponding hereto constitute a conclusion of law requiring no response.

### **Background Facts**

15. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

16. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

17. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof; alternatively, so what?

18. The allegations of the paragraph corresponding hereto are admitted.

19. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

20. The allegations of the paragraph corresponding hereto are admitted.

21. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

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34. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

35. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

36. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

37. To the extent they contend Rideout filed a federal civil litigation matter, the allegations of the paragraph corresponding hereto are admitted; to the extent they contend Rideout effected service of process and joined the County in that matter as a party defendant, the allegations of the paragraph corresponding hereto are denied.

38. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

39. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

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53. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

54. The allegations of the paragraph corresponding hereto are admitted.

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59. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

60. The allegations of the paragraph corresponding hereto are admitted.

61. The allegations of the paragraph corresponding hereto are admitted.

62. The allegations of the paragraph corresponding hereto are admitted.

63. The allegations of the paragraph corresponding hereto are admitted.

64. The allegations of the paragraph corresponding hereto are admitted.

65. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

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allegations contained therein and leaves Plaintiff to proof thereof.

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80. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

81. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

82. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

83. The allegations of the paragraph corresponding hereto are admitted.

84. The allegations of the paragraph corresponding hereto are denied as untrue in fact.

85. The allegations of the paragraph corresponding hereto are denied as untrue in fact.

86. The allegations of the paragraph corresponding hereto are denied as untrue in fact.

87. The allegations of the paragraph corresponding hereto are denied as untrue in fact.

88. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

89. The allegations of the paragraph corresponding hereto are denied as untrue in fact.

90. The allegations of the paragraph corresponding hereto are denied as untrue in fact.

91. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

92. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

93. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

94. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

95. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

96. The allegations of the paragraph corresponding hereto are admitted.

97. The allegations of the paragraph corresponding hereto are denied as untrue as the disciplinary proceedings were not a sham designed to give the appearance of due process, and because before the proceedings took place, Defendants had not already predetermined that Plaintiff was going to be suspended and then terminated.

98. The allegations of the paragraph corresponding hereto are denied as untrue as the proceedings were not a mere pretense for Defendants' decisions to suspend and terminate Plaintiff.

99. The allegations of the paragraph corresponding hereto are denied as untrue as the proceedings were presided over by officials who did not bring false charges against Plaintiff and who did not carrying out any predetermined decision to discipline Plaintiff.



## **Count I**

### **42 USC 1983 – Fourteenth Amendment Procedural Due Process Denial of Property Interest (All Defendants)**

100. Defendant County repeats and reasserts its responses to paragraphs 1 through 99 as though set forth in their entirety here.

101. The allegations of the paragraph corresponding hereto constitute a conclusion of law for which no response is required.

102. The allegations of the paragraph corresponding hereto constitute a conclusion of law for which no response is required; alternatively, having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

103. The allegations of the paragraph corresponding hereto constitute a conclusion of law for which no response is required; alternatively, having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

104. The allegations of the paragraph corresponding hereto constitute a conclusion of law for which no response is required; alternatively, having

insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

105. The allegations of the paragraph corresponding hereto constitute a conclusion of law for which no response is required; alternatively, having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

106. The allegations of the paragraph corresponding hereto constitute a conclusion of law for which no response is required; alternatively, having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

107. The allegations of the paragraph corresponding hereto are denied as untrue as the County afforded Plaintiff basic due process in connection with any and all disciplinary proceedings referenced in this Complaint.

108. The allegations of the paragraph corresponding hereto are denied as untrue as the County did not deny Plaintiff the opportunity to be heard in a meaningful way, and as the proceedings were not a sham or a mere pretense for the

decision to suspend Plaintiff and terminate his employment, which, in any event were not predetermined decisions.

109. The allegations of the paragraph corresponding hereto are denied as untrue as the County did not knowingly bring false charges against Plaintiff, the charges were not false, and the subject officials did not merely effectuated any predetermined decisions to suspend and terminate Plaintiff.

110. The allegations of the paragraph corresponding hereto are denied as untrue as the County did not preclude Plaintiff from questioning witnesses for any reason.

111. The allegations of the paragraph corresponding hereto are denied as untrue as the County did not withhold evidence from Plaintiff that would have exonerated him and as the misconduct allegations resulting in Plaintiff's termination were not false.

112. The allegations of the paragraph corresponding hereto are denied as untrue as the County did not unlawfully invade Plaintiff's property interest and did not act in an arbitrary and irrational manner.

113. The allegations of the paragraph corresponding hereto are denied as untrue as the County did not act with deliberate indifference to Plaintiff's

presumed innocence, did not pre-determine any decision, and did not bring false allegations against Plaintiff.

114. The allegations of the paragraph corresponding hereto are denied as untrue as the County participated in no unconstitutional conduct.

115. The allegations of the paragraph corresponding hereto are denied as untrue as the County participated in no unconstitutional or unlawful conduct and as a result did not act in a manner contrary to what would or would not have been obvious to a reasonable official.

116. The allegations of the paragraph corresponding hereto are denied as untrue as the County's actions were not fundamentally unfair to Plaintiff.

117. The allegations of the paragraph corresponding hereto are denied as untrue as there does exist a rational relationship between Plaintiff's actual conduct and the discipline and termination imposed by Co-Defendants.

118. The allegations of the paragraph corresponding hereto are denied as untrue as the County did not derive Plaintiff of any constitutionally protected rights, including his professional reputation, property interest in his job, or right to due process under the 14<sup>th</sup> Amendment.

119. The allegations of the paragraph corresponding hereto are denied as untrue as the County did not engage in any intentional, outrageous, or reckless

disregard for Plaintiff's constitutional rights.

120. The allegations of the paragraph corresponding hereto are denied as untrue as the acts of Co-Defendants do not represent official policy of Macomb County as neither are final County policy making authorities and their acts are not otherwise attributable to the County as a matter of respondeat superior.

121. The allegations of the paragraph corresponding hereto constitute conclusions of law requiring no response; alternatively, alternatively, having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

122. The allegations of the paragraph corresponding hereto are denied as untrue as any injury or damage suffered by Plaintiff is solely and exclusively attributable to his own misconduct and is not causally related to any conduct attributable to the County.

## **Count II**

### **Violation of Michigan's Whistleblower Protection Act (All Defendants)**

123. Defendant County repeats and reasserts its responses to paragraphs 1 through 122 as though set forth in their entirety here.

124. The allegations of the paragraph corresponding hereto constitute conclusions of law requiring no response; alternatively, having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

125. The allegations of the paragraph corresponding hereto constitute conclusions of law requiring no response; alternatively the allegations of the paragraph corresponding hereto are denied as untrue as a matter of law and fact.

126. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

127. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

128. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

129. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the

allegations contained therein and leaves Plaintiff to proof thereof.

130. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

131. The allegations of the paragraph corresponding hereto are denied as untrue as a matter of law and fact.

132. The allegations of the paragraph corresponding hereto are denied as untrue as a matter of law and fact as the County did not for any reason retaliate against Plaintiff.

133. The allegations of the paragraph corresponding hereto are denied as untrue as a matter of law and fact as the County did not act unlawfully or in an intentional, wanton, willful, malicious, bad faith, or recklessly indifferent manner, or with deliberate disregard concerning any rights or sensibilities of Plaintiff.

134. The allegations of the paragraph corresponding hereto are denied as untrue as a matter of law and fact as the County's conduct is not causally related to any alleged injury or damage allegedly suffered by Plaintiff.

### **Count III**

#### **Retaliation in Violation of Michigan's Elliot-Larson Civil Rights Act (All Defendants)**

135. Defendant County repeats and reasserts its responses to paragraphs 1

through 134 as though set forth in their entirety here.

136. The allegations of the paragraph corresponding hereto constitute conclusions of law requiring no response; alternatively, having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

137. The allegations of the paragraph corresponding hereto constitute conclusions of law requiring no response; alternatively, having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

138. The allegations of the paragraph corresponding hereto constitute conclusions of law requiring no response; alternatively, having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

139. The allegations of the paragraph corresponding hereto are denied as untrue as a matter of law and fact as the County did not retaliate against Plaintiff in any manner or for any reason.



140. The allegations of the paragraph corresponding and sub-paragraphs hereto are denied as untrue as a matter of law and fact as the County did not engage in any conduct prohibited by the ELCRA, and because as a matter of law, the County is not capable of conspiring with any of its officials or employees.

141. The allegations of the paragraph corresponding hereto are denied as untrue as a matter of law and fact as the County did not engage in any conduct to discriminate against employees and/or members of the public based on their race, in violation of the provisions of Michigan's Elliott-Larsen Civil Rights Act, MCL § 37.2101 and § 37.2102, *et seq.*, or for that matter, any other law.

142. The allegations of the paragraph corresponding hereto are denied as untrue as a matter of law and fact as the County did not engage in any manner of unlawful conduct and did not otherwise proximately cause any adverse impact on the terms, conditions, or privileges of Plaintiff's employment.

143. The allegations of the paragraph corresponding hereto are denied as untrue as a matter of law and fact.

144. The allegations of the paragraph corresponding hereto are denied as untrue as a matter of law and fact as the County did not engage in any manner of unlawful conduct and did not otherwise proximately cause any injuries or damages as Plaintiff alleges.

**Count VI (sic)**

**Tortious Interference with a Contractual  
or Advantageous Business Relationship or Expectancy  
(Lucido and Fresard)**

145. Defendant County repeats and reasserts its responses to paragraphs 1 through 144 as though set forth in their entirety here.

146. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to prove thereof.

147. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to prove thereof.

148. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to prove thereof.

149. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to prove thereof.

150. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the

allegations contained therein and leaves Plaintiff to proof thereof.

151. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

152. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

153. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

154. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

155. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to proof thereof.

### **Relief Requested**

Defendant Macomb County denies Plaintiff is entitled to relief of any kind, type, or manner of relief or damages compensable by the County.

### **Declaratory and Equitable Relief**

Defendant Macomb County denies Plaintiff is entitled to relief of any kind, type, or manner equitable relief to be borne by the County.

### **SPECIAL AND AFFIRMATIVE DEFENSES**

1. To the extent he fails to comply with the Rule 8 Pleading standards, Plaintiff fails to state a claim against Defendant County upon which relief may be granted.

2. To the extent Plaintiff's complaint can be construed as presenting a state tort law claim against the County, such claims are barred by the Governmental Immunity Act, MCL 691.1401, et seq.

3. To the extent it predicates County liability upon vicariously asserted theories of recovery, Plaintiff's Complaint fails to state a claim upon which relief may be granted.

4. To the extent it predicates County liability upon the basis of respondeat superior, Plaintiff's Complaint fails to state a claim upon which relief may be granted.

5. To the extent it alleges a violation arising under the Constitution of the United States, Plaintiff's Complaint fails to state a claim against the County upon which relief may be granted.

6. To the extent it alleges a violation of 42 USC 1983, Plaintiff's complaint fails to state a claim upon which relief may be granted.

7. To the extent Co-Defendants are not final policy making authorities for the County, Plaintiff's Complaint fails to state a single-incident claim upon which relief may be granted.

8. To the extent it fails to predicate the County's liability upon the existence and implementation of a constitutionally unsound County policy, Plaintiff's Complaint fails to state a claim against the County upon which relief may be granted.

9. To the extent it fails to predicate the County's liability upon the existence of a widespread and pervasive pattern of similar constitutional violations, Plaintiff's Complaint fails to state a claim against the County upon which relief may be granted.

10. To the extent it alleges the County conspired with its officials or employees to commit unlawful acts, Plaintiff's complaint fails to state a claim upon which relief may be granted.

11. To the extent the incidents reflected in Plaintiff's Complaint did not occur on the identified dates, and instead occurred at earlier times, Plaintiff's claims are time barred.

12. Any injury suffered by Plaintiff was proximately caused by Plaintiff's own unlawful acts and other wrongful conduct.

13. Plaintiff has failed to mitigate his damages.

14. Plaintiff has failed to join every legal or equitable claim arising from the incident central to this suit.

### **RESERVATION OF ADDITIONAL DEFENSES**

Defendant Macomb County in the above captioned matter, by and through counsel, reserves the right to assert and file any affirmative and special defense which may become known by discovery proceedings in accordance with the rules and practices of this Court. Further, Defendant does not waive any deficiency or omission in any pleadings filed by any other party to this suit regardless of when filed.

### **DEMAND FOR COMPULSORY JOINDER OF CLAIMS**

Defendant Macomb County demands Plaintiff join in this action all claims Plaintiff may have against any Defendant arising from the subject matter of this action and which do not require for adjudication the presence of third parties over whom the court cannot exercise jurisdiction.

### **RELIANCE ON JURY DEMAND**

Defendant Macomb County hereby relies on Plaintiff's demand for trial by jury.

Predicated upon the matters presented above, Defendant Macomb County respectfully demands judgment of no cause of action be entered herein, or in the alternative said cause be dismissed, with prejudice, and costs and attorney fees be awarded to Defendant.

Respectfully submitted,

/s/ John A. Schapka

John A. Schapka (P-36731)

Attorney for Defendant Macomb County

One South Main, 8<sup>th</sup> Floor

Mount Clemens, Michigan 48226

(586) 469-6346

[john.schapka@macombgov.org](mailto:john.schapka@macombgov.org)

Dated: February 2, 2023

I certify that on February 2, 2023, I electronically filed the foregoing paper with the Clerk of the Court using the ECF filing system which will forward notification of such filing to the following: all counsel of record; I further certify that I have caused the paper to be sent by United States Postal Service mail to the following non ECF participant: none.

/s/ John A. Schapka

John A. Schapka (P36731)

[john.schapka@macombgov.org](mailto:john.schapka@macombgov.org)